Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76-1011

WALGREEN LOUISIANA COMPANY, INC.; KRAUSS COMPANY, LTD.; SUCCESSION OF FRANK J. MONTELEONE; WILLIAM A. MONTELEONE, Individually; MAE ATTAWAY, now wife of Oliver Miller; MRS. MAY FELLMAN PARKER; MRS. MAY HEYMANN WOLF; JIMMY HEYMANN, Individually and as Trustee of the JERRY HEYMANN SEPARATE PROPERTY TRUST; and JERRY HEYMANN

Petitioners

VERSUS

CITY OF NEW ORLEANS, HENRY G. SIMMONS, Director of Finance; CITY OF NEW ORLEANS, CLAUDE J. MAUBERRET, JR. , Assessor; LOUISIANA TAX COMMISSION; C. GORDON JOHNSON; ROBERT C. BRAODHURST; and MRS. BLANCHE R. LONG; STATE OF LOUISIANA and ORLEANS LEVEE BOARD,

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

WALGREEN LOUISIANA COMPANY, ET AL.
Petitioners

VERSUS

CITY OF NEW ORLEANS, ET AL.,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

Petitioners, Walgreen Louisiana Company, et al respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana entered September 13, 1976, rehearing denied October 15, 1976.

OPINIONS BELOW

The opinion of the Court of Appeal, Fourth Circuit, State of Louisiana is reported at 325, So. 2d 673. The opinion of the Supreme Court of the State of Louisiana is reported at 337 So. 2d 1081.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. Section 1257(3).

QUESTION PRESENTED

Whether Petitioners' constitutional rights under the Fourteenth Amendment of the United States Constitution, have

been violated by the singling out of their properties, constituting but a very minor portion of the Second Municipal District of the City of New Orleans by the Louisiana Tax Commission, applying to them a discriminatory method of establishing land values and the application of a higher percentage of value in the assessment of both land and improvements, while applying to a much larger portion of said district, the established and customary method of valuation and a lower percentage of value, without any statutory authority and without even adopting a cyclical plan of revaluation, and whether, such intentional and unlawful discrimination, without any reasonable classification, violates the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

I. SYSTEM OF ASSESSMENTS IN LOUISIANA

Real estate ad valorem taxes are levied by local governing bodies to finance various governmental services. The City of New Orleans which encompasses and is coextensive with the Parish of Orleans, is divided into seven (7) assessorial (Municipal) districts with an elected assessor for each. (L.S.A. R.S. 47:1901) Pursuant to L.S.A. R.S. 47:1909, each assessor must "independently exercise his functions in the assessing and listing of property in and for his respective district. . .". It is the function of the assessor to list real and personal property and to establish its valuation (assessment) for the purposes of levying ad valorem taxes. L.S.A. R.S. 47:1889 provides that assessments may be based on a percentage of fair market value, but that "for local purposes the percentage shall operate equally and uniformly on all taxable property within the parish . . .". (L.S.A. R.S. 47:1889, Louisiana Constitution of 1921 Art. X, Sec. 1.)

Subsequent to the completion of listing and assessing property, the assessment rolls for the year are closed. The Board of Reviewers, which consists of the Mayor of the City of New Orleans, members of the City Council and representatives of other governmental agencies which receive a portion of the ad valorem taxes collected by the City, are statutorily empowered to meet and review taxpayers' complaints as to the value of their property as established by the assessor and/or review all or a portion of the assessment rolls of the seven municipal districts located within the City of New Orleans. Then the Board "shall recommend to the Tax Commission increases or decreases in any assessment in real or personal property made by the various assessors of the Parish of Orleans. . . . .". (L.S.A. R.S. 47:1995).

The rolls of the assessors and the recommendations of the Board, if any, are then forwarded to the Louisiana Tax Commission who then review the assessors' rolls and the recommendations of the Board, who fixes the value of all taxable property within the various parishes and upon which assessment, ad valorem taxes, will be levied (L.S.A. R.S. 47:1989).

The Tax Commission is required to establish assessments and rates in conformity with the principle of equality and uniformity throughout the State, and each tax district. In *Bussie v. Long*, 286 So. 2d 781, writ refused, 288 So. 2d 354, the First Circuit, Court of Appeals, said:

> "If both standard of true value and the uniformity and equality required by law with respect to ad valorem taxation cannot be achieved, equality and uniformity are preferred."

II. THE DISCRIMINATORY CONDUCT

Petitioners are the owners of or the lessees of certain immovable prperty located in the Second Municipal District of the City of New Orleans, in that part of the district bounded by the Mississippi River, Iberville St., Claiborne Avenue and Canal Street, an area of approximately 17 square blocks.

The Assessor for the Second Municipal District assessed petitioners' properties for the year 1974 in the customary manner and at the customary percentage. The Board of Reviewers, however, on its own initiative, singled out petitioners' properties and other properties in said seventeen square blocks, had the same appraised, as to land only by appraisers selected by the Real Estate Board of New Orleans, adopted their valuations *and a* 33 1/3% ratio as a basis for the assessment, leaving unchanged the assessorial assessments and ratio of 25% for the remaining, much larger portion of said Second Municipal District, including residential and commercial properties. The Tax Commission without any further investigation then assessed taxes on petitioners' properties in accord with such methods and at the higher percentage, again retaining the assessorial valuations and percentages for the remainder of said district.

The same procedure was applied for th 1975 taxes.

During the month of January 1974, and again in January, 1975, Petitioners paid City of New Orleans and Orleans Levee Board ad valorem taxes thus levied against their property, under protest, pursuant to L.S.A. R.S. 47:2101, and filed suit to recover the difference between 1973-1974 and 1973-1975 real estate ad valorem taxes, (difference resulting from increases in assessments and ratio) paid by Petitioners, (approximately $23,400.00).

The basic thrust of Petitioners' suit and the instant application is that the method of establishing their 1974 and 1975 land assessments and the assessment percentage ratio of 33-1/3% is violative of the Federal and State Constitutions and the statutes of Louisiana, in that same is unconstitutionally discriminatory as it creates a *dual assessment system* in the Second Municipal District which is unequal and lacks uniformity.

The Assessor of the Second Municipal District, Claude J. Mauberret, Jr., during the year 1973, prepared the 1974 assessment rolls for his district. For 1974, the Assessor adopted for the entire Second District uniformly, the same assessment levels as those used in 1973. The assessor established land assessments for the Second Municipal District based on a front footage valuation and applied to percenage of 25% of the "fair market value" of land and improvements. The Assessor testified:

> "Q. And in your capacity as the Assessor from 1960 to this day, you were charged with the duty to value the properties in the Second Municipal District and to submit such valuations to the Tax Commission for final determination?
>
> A. Every year. Yes, sir." (T. p. 56)
>
> * * * * * * *

> "Q. That is what I am directing my questions to. Did you use the same percentage whatever the value, whether it was a thousand or ten thousand? Did you use the same percentage of said value throughout the Second Municipal District?
>
> A. Yes, sir." (T. p. 57)
>
> * * * * * * *

"Q. Now, throughout the Second Municipal District in 1973, did you use a uniform, what I call ratio or percentage throughout the district?

A. Yes, sir, about twenty-five percent."

(T. p. 61)

During the year 1973, the City of New Orleans retained the services of three real estate appraisers to review the land assessments *only* in the 17 square block portion of the Second Municipal District, described above. The appraisers reviewed only land values, ignored the value of improvements, and established a per square foot land value. The City transmitted this "valuation" to the Board, who, after the assessor's rolls had closed, notified Petitioners as to revised land assessment levels, based on the appraisers' square foot valuation, (designated by the Board as "Recommended Asssessment"). Further, the Board advised that the recommended assessment was based on a ratio of 33-1/3% of the land value as established by the appraisers and the value of the improvements. The Board, upon the application of the City, held public hearings and, with nominal changes in original recommended increased assessments, (figures not set by the Board but established by the City and the Mayor's staff), established "Final Recommended Assessments" and transmitted same to the Louisiana Tax Commission.

The Commission adopted, in toto, the Board's "Final Recommended Assessment". The Commission, in so doing, completely disregarded and discounted the Assessor's recommendations and methodology, utilized by him for the previous ten (10) years.

Thus, by such unconstitutionally discriminatory procedures the Board established Petitioners' 1974 real estate

tax liability. Taxes levied in 1975 on Petitioners' property were based upon the assessment levels established by the Tax Commission in the fall of 1973.

III. CONSTITUTIONAL INFIRMITY

Thus, Petitioners, as taxpayers, and owners of property situated in the Second Municipal District of the City of New Orleans, were subjected to an increased tax burden as to their 1974 and 1975 real estate taxes, as a result of assessment procedures lacking uniformity and equality. Specifically as a result of:

1. A methodology applied to a small area of the Second District in which their properties are located, adopted by the Board and based on appraisals made by independent appraisers establishing a square foot land valuation, whereas in the remainder of the Second Municipal District, *almost thirteen times larger than the area affected,* valuations were established by the method used by the Assessor since 1960, and followed by the Tax Commission;

2. The properties in the area affected were assessed at a ratio of 33-1/3%, whereas, in the reminder of the Second Municipal District, properties were assessed at 25%.

Each of the foregoing constitutes a *deliberate* destruction of the uniformity of assessments which previously existed in the Second Municipal District with the result that there is neither uniformity nor equality as to the tax burden imposed on taxpayers within that District. The chairman of the Louisiana Tax Commission testified:

"Q And where were these assessments?

A Along Canal Street. I think seventeen blocks

from the River on Canal Street back one block east.

Q Is that the only recommendation with regard to the Second Municipal District that was made by the Board of Reviewers?
A Yes, sir.

Q With regard to a small area bounded by Canal Street, Iberville Street, the River and North Claiborne, is that correct, sir?
A I believe that is the boundaries. Yes, sir.

Q So, with regard to the remainder of the Second Municipal District, all you had for your purposes were the valuations or recommendations made by the Assessor of the Second Municipal District.
A That is correct.

Q That is correct, now, what did the Tax Commission do first with regard to that portion of the Second Municipal District which is Iberville, River and North Claiborne?
A The Commission didn't make any changes than what the Assessor had on the tax roll. The Assessor made the tax assessment on the rest of the District.

Q The Tax Commission approved and adopted the recommendations made by Dr. Mauberret, the Assessor for the Second Municipal District?
A That portion that is outside of this that is in quest, yes, sir."

(C. Gordon Johnson, Chairman, Louisiana Tax Commission, T. p. 21)

The principle that real estate ad valorem taxes must be assessed equally and with uniformity in a taxing district is firmly imbedded in the United States Constitution, the Louisiana Constitution and the laws of the State of Louisiana, and decisions of Federal and State Courts. The Fourteenth Amendment to the U.S. Constitution protects taxpayers against any attempt by taxing authorities to violate such principles and a claim by taxing authorities that they are justified in violating the principles of equality and uniformity for achieving equalization of assessments, must be rejected. Throughout the history of Constitutional Law, this Court has consistantly rejected the theory that "the end justifies the means". When the "means" are violative of constitutional safe guards of the rights of citizens.

Involved in this case is the basic issue whether the singling out of a small portion of a Municipal District, by applying to it a different method of establishing land values and the application of a different percentage in the assessment of both land and improvements, while applying to a much larger portion of said District, the customary and established method of valuation and percentage, without any specific legislative authority and in direct violation of the Constitution of Louisiana of 1927, violates the constitutionally protected rights of the taxpayers singled out for such discriminatory practices. The law and jurisprudence clearly unequivocably, and unmistakable proscribes such practices.

> "It is settled that the taxpayer is entitled to have his properties taxed at that percentage of value applicable to others equally and similarly situated even though statutory law may provide otherwise. The rule is based on the principle that if both the standard of true value and the uniformity and equality required by law cannot be achieved,

equality and uniformity is preferred under the law." *Sioux City Bridge Co. v. Dakota County,* 260, U.S. 441, 43 S. Ct. 190, 67 L.Ed. 340.

"L.S.A. R.S. 47:1901-2000, inclusive, is obviously designed to provide a system of uniform assessment and taxation throughout the State as a whole and *each local taxing district,* including parishes *or part of parishes* and special taxing districts comprised of two or more parishes or part of parishes. *Victor A. Bussie, et ux v. Blanche Revere Long, Louisiana Tax Commission, et al.,* 286 So. 2d 689, writs refused" (Emphasis Supplied)

"A state may establish reasonable classifications for the taxing of property at different rates. However, if state law requires that all property be taxed at a uniform rate and has enacted laws to insure such result, any substantial disparity or difference in taxes arising from failure of state officers to properly administer the laws will be held in violation of the due process and equal protection clauses of the United States Constitution. *Weissinger,* above. to the same effect, see *Louisville & Nashville R. Co. V. Public Ser. Comm. of Tenn. D.C.,* 249 F. Supp. 894". *Bussie v. Long,* 286 So. 2d, 689.

A fortiori, taxing of properties within the same district at different and discriminatory rates and in a different manner is repugnant to the Constitution and the laws of the United States. Provisions as to equality and uniformity require uniformity not only in the rate of taxation, but also in the mode of assessment upon the taxable valuation. *Green v. Louisville & I.R. Co.,* 244 U.S. 499, 61 L.Ed. 1280, 37

S. Ct. 673.

In singling out Petitioners' properties and applying to the same a methodology and ratio, different from that applied to other properties in the Second Municipal District, the Board of Reviewers and the Tax Commission not only violated the principle of equality and uniformity, but under the guise of an "Equalization Plan", acted in a manner distructive of "equalization".

"Q. That thirty-three and one-third was applied only to that small area and not to the remainder of the Second Municipal District?
A. That is correct". (Johnson, T.p. 33)

* * * * * * *

"Q. Twenty-five percent. I'm sorry. You used twenty-five percent of the value that you established in that particular, Canal, Iberville, River, North Claiborne, area, and the Board of Reviewers adopted a different percentage, to-wit, thirty-three and one-third, is that correct?
A. Yes, sir.

Q. And was that also adopted by the Tax Commission?
A. Yes,sir, but, like I am trying to tell you, not all of it, you know.

Q. Not all of it. Certain exceptions?
A. Yes, sir.

Q. In that area?
A. Yes, sir.

Q. In which they left your values stand?
A. Yes, sir."

(Mauberret, T. p. 61)

The equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, require equality in assessment, imposition, and collection of taxes.

In *Weissinger v. Boswell,* 330 F. Supp. 615, at page 621, the Court noted:

> "It is well established that the states have wide discretion in the levying and collecting of their taxes. The law is equally clear, however, that such discretion cannot be exercised so as to arbitrarily deprive persons of their constitutional rights. So, while the Fourteenth Amendment does not require precise equality or uniformity in taxation, or prohibit inequality in taxation which results from mere mistake or error in judgment of tax officials, it does 'secure' every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its proper execution through duly constituted agents. Stated differently, the Fourteenth Amendment protects only against taxation which is palpably arbitrary or gossly unequal in its clear application to the persons concerned."

The systematic irregularities of the assessment of property of the same class is an unconstitutional discrimination against one who is compelled by such a system to pay more than his

fair share of the aggregate tax.

There is no dispute but that the Tax Commission raised both the assessments and tax percentage with regard to Petitioners' properties and other properties in a small area of the Second Municipal District, and in doing so, relied on a methodology of fixing value of said properties different from that applied to the vast majority of properties in the Second Municipal District.

Thus, the issue is *not* whether an alleged plan of equalization, pursuant to which the Tax Commission acted, is good, bad or indifferent, but rather, whether such plan and actions are in violation of the federal constitution.

In Sioux City Bridge Co., v. Dakota County, Neb., 260 U.S. 441, 43 S. Ct. 190, 67 L.Ed. 340 (cited in *Bussie v. Long,* p. 700), the United States Supreme Court held that:

> "It is settled that a taxpayer is entitled to have his property taxed at that percentage of value applicable to others equally and similarly situated, even though statutory law provides otherwise."

The Trial Court below, in dismissing Petitioners' suit, stated:

> "The Court has no right to invalidate action by tax assessing authorities on the ground merely that the equalization plan is not the best which could have been pursued."

The Court thus assumed, that "tax assessing authorities" may adopt an "equalization plan" which imposes increased taxes upon certain property owners in one (1) small segment

of the Second Municipal District. We most earnestly urge that an equalization plan must apply with uniformity upon the same class of properties in the same district and that any plan employing piecemeal "equalization" and which is applied to an arbitrarily selected portion of a district, resulting in increasing the taxes of some, but not all properties in that district violates the mandate of the United States Constitution, Louisiana Constitution of 1925 and the laws of the State of Louisiana.

This Court has repeatedly held that states and taxing authorities of municipalities are subject to the requirements of the due process and equal protection clauses of the 14th Amendment. *Hillsborough Twn. v. Cromwell,* 326, U.S. 260, 90 L. Ed. 358, 66 S. Ct. 445; *Louisville Gas and Electric Co. v. Coleman,* 277 U.S. 32, 72 L.Ed. 770, 48 S. Ct. 423. *Concordia Ins. Co. v. Illinois,* 292 U.S. 535, 78 L.Ed. 1411, 5 S.Ct. 830, *Baker v. Ducesidow,* 263 U.S. 137, 68 L.Ed. 212, 44 S.Ct. 40.

The rule of law is thus stated in 71 Am. Jur. 2d., State and Local Taxation, Section 152, page 473:

> ". . .that a tax having State purpose must be uniform and equal throughout the State, a tax having a County purpose must be uniform and equal throughout the County, and a tax having a City, Village or Township purpose must be uniform and equal throughout the City, Village, or Township."

On the same page, second paragraph, it is stated:

> ". . .it has been held that it is not competent for the legislature under constitutional requirements of equality and uniformity to divide a taxing district

> into parts and levy a tax for district purposes *at a higher rate in one part than in another.* (emphasis added)

The Supreme Court of Virginia, in the case of *William A. Perkins, Jr., et al v. County of Albemarle,* in its original decision, 198 S.E. 2d. 626, and on rehearing, 200 S.E. 2d., 566, ruled in favor of Appellants in a case *on all fours* with the case at bar, the Court said:

> "As our proscription of the methodology employed by Albemarle County makes plain, such tools cannot be applied ARBITRARILY to all tax parcels within one geographic segment of the tax jurisdiction to the exclusion of all tax parcels in other geographic segments." (200 S.E. 2d, page 569).

In *Sparks v. McCluskey,* 84 Ariz. 283, 327 P. 2d 295, the Supreme Court of Arizona reached the same conclusion, for this to-wit:

> "Application of discriminatory formula to selected pieces of property was not justified on theory that such assessments were part of long-term program to bring to date all valuations in county."

Mr. Gagliano, Executive Assistant to the Mayor of the City of New Orleans, was assigned, in 1972, to the staff of the Board of Review for the Parish of Orleans. He testified:

> "Q What is your understanding of equalization in taxation?
>
> A My personal understanding of the word is where property that is similarly situated

> and similarly constructed should be of equal value for assessment and taxation purposes and are not equal value and not equally assessed. That way they should be made the same and equal." (T. p. 98)

It is impossible for Defendants to reconcile their understanding of the meaning of equalization, the clear and precise constitutional mandate of equality and uniformity, with the methodology utilized. Such rank discrimination cannot and must not be permitted to stand.

IV. THE PLAN

As their only defense, the City of New Orleans, et al., contend that a plan did and does exist and that such a plan was systematic and therefore did not deprive Petitioners of their constitutionally guaranteed right of equality and uniformity in taxation.

At the trial below, the Defendants introduced a resolution adopted by the Board on September 21, 1972 (Exhibit No. 3 City of New Orleans, Appendix, page A-1), a resolution dated September 21, 1973 (Exhibit No. 4, City of New Orleans, Appendix, page A-3) and a resolution undated, concerning assessments for 1975 (Exhibit No. 5, City of New Orleans, Appendix, page A-5). In addition, the City of New Orleans introduced an affidavit of publication (Exhibit No. 2, City of New Orleans, Appendix, page A-8) and an article which appeared in the Times-Picayune on January 1, 1975 and marked Exhibit No. 6, City of New Orleans (Appendix, page A-7).

All of these exhibits conclusively show that *no general, systematic plan had been adopted by the Board* so as to pre-

sent to the Louisiana Tax Commission a methodology by which it was to accomplish a revaluation of *all* similarly situated property located within the Second Municipal District or the City of New Orleans as a whole.

The fact is undeniable that commercial property in the City of New Orleans, other than that in the Central Business District will *never* be revalued in accordance with the "plan". It is a fallacy to say that Plaintiffs will "bear a larger portion of the tax burden for a reasonable time until all property is revalued." They will bear that burden until 1978 when *all* properties will be revalued in accordance with the 1974 Constitution by a self reporting system. Plaintiffs' constitutionally guaranteed right to be taxed "equally and uniformly" has been violated for the years 1974 and 1975 and will continue to be violated for the years 1976 and 1977. This is the crux of the case sub judice.

V. DECISION OF THE LOUISIANA STATE SUPREME COURT

The majority opinion in reversing the judgment of the Court of Appeal, Fourth Circuit, concluded that the Board of Reviewers for the Parish of Orleans had adopted a valid "plan" to equalize ad valorem taxes, and that:

> "In summary, there has been substantial compliance with relevant statutory requirements, and no violation of due process or equal protection clauses of the United States Constitution."

The Court, on page 6 (Second Paragraph) of its opinion, states:

"By the end of 1974 the Board of Reviewers had adopted a program for revaluation of all lands in the City of New Orleans. All assessments on vacant property in Orleans Parish were to be equalized in 1975. In 1976 assessments for land zoned for various industrial uses were to be equalized to be followed in 1977 for land zoned for commercial uses, for shopping centers, neighborhood businesses, medical services and general office districts. Revaluation and equalization were to be completed in 1978, including land and improvements, residential areas and specially zoned historic districts."

The Louisiana Supreme Court reaches such conclusion by accepting Defendants' argument, even though undeniably Petitioners were subjected to a higher tax basis and tax ratio in 1974 and 1975, saying, on page 10:

"We do not find support in the record for Plaintiffs' contention that their property had been singled out for the application of a higher tax ratio than other similarly situated properties."

This statement is, as a matter of fact, *incorrect*. In 1974 and 1975, (and thereafter), the "Iberville strip" has been singled out for a higher tax valuation and ratio (33 1/3%)! In the next sentence, the opinion proceeds to explain that:

"We find no evidence that it was the intention of the Board of Reviewers or the City Council or the Louisiana Tax Commission to apply a higher percentage to the value of Central Business District property than to similar commercial property outside the Central Business District when the revaluation was completed."

The following analysis of said statement will show that it is contrary to the evidence and the law:

1. For a period of 2 years, the three agencies consistently and deliberately applied a higher percentage to the value of Central Business District property, disregarding all protests and appeals of the injured taxpayers. Thus, the intention is clear and patent.

2. Such action in itself is an obvious violation of the very statutes cited in the opinion: Louisiana Constitution 1921, Article X, Section 1; R.S. 47:1989; *Bussie v. Long*, 286 So. 2d 689.

These authorities (and others) mandate that:

(a) ". . . . . .and all taxes shall be uniform upon the same class of subject throughout the territorial limits of the authority levying the tax." Louisiana Constitution 1921, Article X, Section 1.

(b) ". . . . . ., that for local purposes the percentage shall operate equally and uniformly on all taxable property within the parish....". R. S. 47:1989.

(c) ". . . . . .if both standard of true value and the uniformity and equality required by law cannot be achieved, equality and uniformity is preferred under the law." *Bussie v. Long* supra, citing *Sioux City Bridge Co. v. Dakota County, Neb.* 260 U.S. 441.

Thus, any action by the State, Tax Commission, or municipal agency which results in a disparity or difference in taxes is absolutely proscribed in Louisiana, and violates the due process and equal protection clauses of the United States Constitution. *Weissinger v. Boswell,* D.C. 330 F. Supp. 615.

It is undoubtedly true that the Tax Commission and local authorities have the power to collect taxes on "less than actual cash valuation" and have the right to classify different kinds of property but this does not detract from the prohibition of discriminating within a class. This does not confer upon either the Board of Reviewers or the Tax Commission the right to impose higher taxes on commercial properties in one geographical area and retain lower taxes on the same kind of properties in another geographical area of the same district.

The majority's opinion admits (page 11):

> "it is true that the authorities proceeded in a step-by-step manner,without the formal adoption of a city-wide plan until the end of 1974. That plan contemplated the equalization of assessments on all business and commercial property in the City in 1977."

Thus, the majority opinion admits that when Petitioners' properties were singled out for a different method of assessment and a higher percentage of assessment in 1973 and 1974, for collection of their taxes for 1974 and 1975, there was no formal or city-wide plan in existence, which renders such selection arbitrary, discriminatory and violative of the United States Constitution, the Louisiana Constitution, and the Louisiana law.

VI. REASONS FOR GRANTING WRITS

By selecting a small area of the Second Municipal District in which Plaintiffs' properties are located under a "plan", for the adoption of which there is no legal authority, the Board of Reviewers and the Louisiana Tax Commission applied *arbitrarily* to all tax parcels within one geographical segment of the tax jurisdiction to the exclusion of all other tax parcels in other geographic segments of the *same* tax district, a methodology forbidden by the Constitution because the application of such tools does not promote the uniformity the Constitution commands, but, on the contrary, discriminates against the tax parcels of Petitioners. In order to achieve uniformity in the tax jurisdiction at large, such tools must be applied in the jurisdiction at large *whereever* value changes are disproportionate. Thus, the singling out of Petitioners' properties constitutes a flagrant, intentional deliberate, unreasonable and discriminatory type of piecemeal system of assessment of real estate for tax purposes, in violation of the Constitutional mandate that all taxes shall be uniform upon same class of subjects.

VII. CONCLUSION

The system proposed by the City of New Orleans, approved by the Board of Review, and adopted by the Louisiana Tax Commission, no matter how well intended, is in the teeth of the Federal and State Constitutions, the law and Louisiana jurisprudence, for it sacrifices equality and uniformity on the altar of an abortive equalization plan and arbitrarily singles out a small number of taxpayers to be burdened with higher assessment values and higher percentages of the tax. Our complaint is not that "the first such step . . . is not large enough or that it has not yet been followed by a sufficient number of additional steps"; our

complaint is that Petitioners have been singled out and subjected to an intentionally discriminatory valuation process and ratio of value resulting in a larger tax burden than other owners of similarly situated property in the same assessment district. Our complaint is that such method, though called "equalization plan", is but an arbitrary and discriminatory act, violative of the Fourteenth Amendment to the United States Constitution, of Article X, Section I of the Louisiana Constitution of 1925, R. S. 47:1989, and the established jurisprudence. Under our constitutional system, it is the province of the Court to protect individual taxpayers against such plans and to strike them down as unconstitutional and illegal when they violate the United States Constitutional, the Louisiana Constitution, and Louisiana law.

We respectfully suggest that under the Fourteenth Amendment, the right of Petitioners to be treated uniformly and equally with other taxpayers in the Second Municipal District of New Orleans has been infringed by the decision of the Supreme Court of Louisiana.

For the reasons more fully discussed above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

LAW OFFICES OF ARTHUR L. BALLIN

BY:

FRANK C. DUDENHEFER
1121 Carondelet Bldg.
New Orleans, La.
Telephone: 523-2155
ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition for Writ of Certiorari have been served on:

Lee R. Miller, Esq.
Room 2W23, City Hall
New Orleans, Louisiana 70112

Robert L. Danner, Jr., Esq.
Attorney General's Office
2-3-4 Loyola Avenue
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Gaspar J. Schiro, Esq.
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Richard J. McGinity, Esq.
1649 First N.B.C. Building
New Orleans, Louisiana 70112

Nathaniel Gisclair, Jr., Esq.
806 First N.B.C. Building
New Orleans, Louisiana 70112

this 12th day of January, 1977.

FRANK C. DUDENHEFER

APPENDIX

APPENDIX A

RESOLUTION OF CITY OF NEW ORLEANS #3

Filed: May 15, 1975

RESOLUTION

CITY HALL
SEPTEMBER 21, 1972

WHEREAS, the rates of assessment on the land of various properties in the Central Business District are not uniform and equal; and

WHEREAS, the under valuation of land creates negative effects on land use by discouraging the betterment and development of CBD property and by encouraging harmful speculation and the holding of land out of commerce; and

WHEREAS, the implementation of a site value taxation formula would create greater equity and would discourage harmful speculation and encourage better land use; now, therefore

BE IT RESOLVED BY THE BOARD OF REVIEW OF THE CITY OF NEW ORLEANS that the BOARD endorses the recommendation of the Committee of the Board of Review to assess land values in that portion of the CBD bounded by by Canal Street, the Mississippi River, Gaienne Street, the Pontchartrain Expressway, South Claiborne Avenue and back to Canal Street, at 33-1/3 per cent of market land value.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON ADOPTION OF SAME AND RESULTED AS FOLLOWS:

YEAS: Landrieu, Beer, Ciaccio, Di Rosa, Dupuy, Lambert, Moreau, Reith, Spears, Brehm (10)

NAYS: 0

AND THE RESOLUTION WAS ADOPTED.

S/ RICHARD J. KERNION
Richard J. Kernion, Secretary
to the Board of Review

APPENDIX B

RESOLUTION OF CITY OF NEW ORLEANS#4

Filed: May 15, 1975

RESOLUTION

City Hall
September 21, 1973

WHEREAS, the rates of assessment on the land of various properties in the Central Business District are not uniform and equal; and

WHEREAS, the under valuation of land creates negative effects on land use by discouraging the betterment and development of CBD property and by encouraging harmful speculation and the holding of land out of commerce; and

WHEREAS, the implementation of a site value taxation formula would create greater equity and would discourage harmful speculation and encourage better land use; now, therefore

BE IT RESOLVED BY THE BOARD OF REVIEW OF THE CITY OF NEW ORLEANS that the BOARD endorses the recommendation of the staff of the Board of Review to assess land values in that portion of the CBD bounded by Canal Street, the Mississippi River, Iberville Street and North Claiborne Avenue, at 33 1/3 per cent of market land value.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON ADOPTION OF SAME AND RESULTED AS FOLLOWS:

YEAS: Landrieu, Moreau, Ciaccio, Rittiner, Porte, Alexander (6)

NAYS: 0

AND THE RESOLUTION WAS ADOPTED.

s/ RICHARD KERNION
Richard Kernion, Secretary to the Board of Review

APPENDIX C

RESOLUTION OF CITY OF NEW ORLEANS 5

Filed: May 15, 1975

ORLEANS PARISH
BOARD OF REVIEW

RESOLUTION

WHEREAS, the Orleans Parish Board of Review has undertaken a program of review and equalization of land assessments in Orleans Parish; and

WHEREAS, the staff of the Board of Review has attempted to review and equalize land assessments in the eastern New Orleans area of the Third Municipal District in 1972 and 1973; and

WHEREAS, a study of land assessments made in 1974 by independent appraisers has shown that land assessments in this area are presently at 8.9 per cent of market value; and

WHEREAS, this Board has not previously formally adopted a plan to review and equalize land assessments in the Third Municipal District or in the remaining vacant properties in the City of New Orleans, exclusive of the Central Business District and Lower Coast Algiers;

THEREFORE, BE IT RESOLVED, that the Orleans Parish Board of Review recommends to the Louisiana Tax Commission the equalization of 1975 land assessments at 10% of market value as determined in the appraisal report herein submitted in the area delineated below:

1. Read Road regional shopping area and other properties from that area bounded by Haynes Boulevard to the Chef Menteur Highway and Paris Road, excepting residential subdivisions.

2. All lands east of Paris Road from Lake Pontchartrain south to the St. Bernard parish line and east to St. Tammany parish line, excepting residential subdivisions.

BE IT FURTHER RESOLVED, that those vacant lands located in the above described area and all other vacant land located in the City of New Orleans, exclusive of the Central Business District and Lower Coast Algiers, be appraised in cooperation with the respective assessors for the year 1976 and that all vacant properties including the ones considered in this resolution, but excluding the Central Business District, be placed on the 1976 tax rolls at 20 per cent of market value.

BE IT FURTHER RESOLVED, that the 1975 land assessments in the above mentioned area of the Third Municipal District recommended by the Orleans Parish Board of Review be not less than the land assessments shown on Assessor Hickey's 1974 tax rolls.

YEAS: Councilmen Ciaccio, Dupuy, Friedler, Lambert, and Sapir; Mr. Brehm, Sewerage & Water Board - 6

NAYS: Councilman DiRosa; Mr. Rittiner, Orleans Parish School Board; Mr. LaBreche, Orleans Levee Board; and Mr. Rieth, Board of Liquidation - 4

ABSENT: Mayor Landrieu, Councilman Moreau - 2

APPENDIX D

Times-Picayune
January 1, 1975
Section 2, Page 2

City Y N. 16

Assessment Equalizing Plan Released

A four year assessment review and equalization plan has been released by the New Orleans Board of Review.

Since 1972, when the board equalized land assessments in the Central Business District portion of the First Municipal District and on vacant properties in the Fifth Municipal District, the equalization program has been underway.

The following year, the board equalized land assessments in the CBD portion of the Second Municipal District, and in 1974 the board equalized assessments on public utility and railroad company properties within Orleans Parish and on land in the eastern New Orleans portion of the Third Municipal District.

The assessment review and equalization plans for the next four years as follows:

—In 1975 equalize land assessments on all vacant properties within Orleans Parish;

—In 1976 equalize land assessments on all land zoned heavy industrial (HI), light industrial (LI) and special industrial (SI).

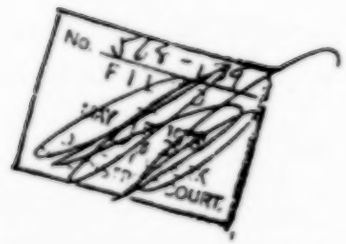
—In 1977 equalize land assessments on all land zoned as C-1, C-2 (general commercial district) and SC (shopping center district). Also, B-1, B-2 (neighborhood business district), MS (medical service district), and RO (general office district).

—In 1978 equalize land and improvement assessments in Orleans Parish according to constitutional limits and statutory guidelines, including all residential and special historic zoning districts.

A board spokesman said the program is being accomplished in "piecemeal fashion" because of limited funds.

He added that although 1975 plans call for land assessments on all vacant properties within the parish to be equalized, this would not include vacant properties already re-valued under the board's program in 1973-74.

The board will commission an appraisal of all remaining vacant properties in the parish to assist the various assessors in the preparation of the 1976 tax rolls, he said.



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APPENDIX E

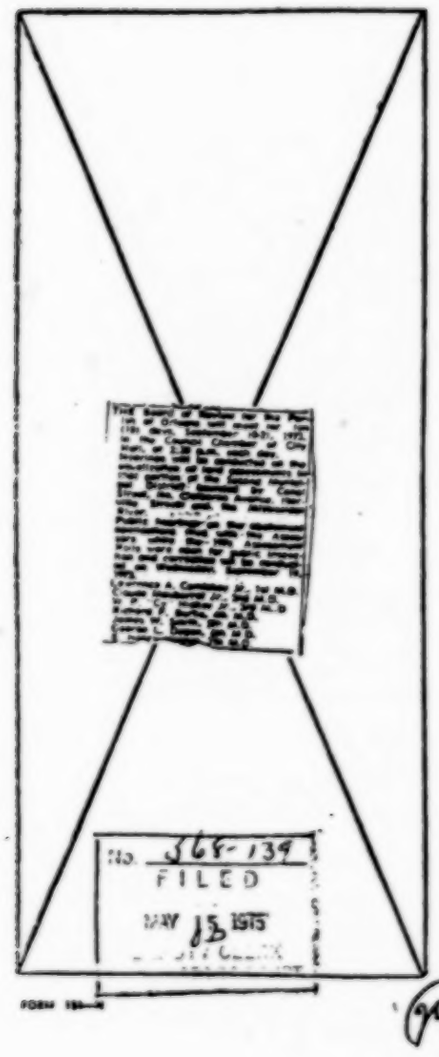
City of New Orleans #2

The Times-Picayune Publishing Corporation

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The Times-Picayune
MORNING AND SUNDAY

THE STATES-ITEM
EVENING



State of Louisiana

Parish of Orleans

City of New Orleans

Personally appeared before me, a Notary in and for the Parish of Orleans, M. L. La Noue, who deposes and says that she is Treasurer-Credit Manager of the Times-Picayune Publishing Corporation, a Louisiana Corporation, Publishers of The Times-Picayune week-day Morning, New Orleans States-Item, week-day Evening, and Times-Picayune Sunday, of general circulation; doing business in the City of New Orleans and State of Louisiana, and that the attached

Special Notice.....
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Advertisement of Board of Review.....
.....City Hall, Mayor Office....
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.....New Orleans, La. 70112....
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.....
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on the following dates: States February 3,5,6,
7,8,9,10, 1975 Times February 4,5,6,7,8,9,10,
.....

M. L. La Noue

Sworn to and subscribed before me this
30th day of April A. D., 19.75.

Notary Public

My commission expires at my death.

No. 568-139
FILED
MAY 15 1975

90

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APPENDIX F

JUDGMENT

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 568 - 139 DIVISION B DOCKET NO.

WALGREEN LOUISIANA CO. INC., ET AL.

VERSUS

CITY OF NEW ORLEANS, ET AL.

JUDGMENT

This cause came for trial May 15, 1975.

Present: Arthur Ballin, and Frank C. Dudenhefer
Attorneys for Plaintiffs

Beuker Amann and Lee Miller,
Attorneys for City of New Orleans and Henry G. Simmons, Director of Finance

Gasper J. Schiro, Attorney for Defendant,
Dr. Claude J. Mauberret, Jr., Assessor

Robert L. Danner, Jr., Attorney for Defendant, La. Tax Commission and The Members Thereof and State of Louisiana

Richard J. McGinity, Attorney for Defendant,
Orleans Levee Board

For the written reasons previously assigned by the Court in the case of *Cliff Probst et al vs City of New Orleans, et al.*, No. 552-723 and 552-724,

IT IS ORDERED ADJUDGED AND DECREED that Plaintiffs' suit be and it is hereby dismissed at their cost.

JUDGMENT READ RENDERED AND SIGNED IN OPEN COURT, MAY 15, 1975.

s/ A. J. Duplantier
JUDGE

APPENDIX G

REASONS FOR JUDGMENT

Filed: Feb 10, 1975

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 522 723 CONS. WITH
522 724 DIVISION B DOCKET NO.

CLIFF PROBST
VS.
CITY OF NEW ORLEANS, ET AL

REASONS FOR JUDGMENT

Louisiana's ad valorem tax system has probably been the subject of more attention, judicial, legislative and executive, than any other governmental issue during the past half century. Most of the many lawsuits which preceded this one involved attempts to compel equalization of assessments or to nullify taxes as being imposed unequally. Apparently, this is the first case involving a constitutional attack by taxpayers whose taxes are increased as a result of action taken by the taxing authorities in attempting to equalize assessments, albeit in only a small part of the city, the taxing authority involved, and with respect to land only, not improvements.

The Court has no right to invalidate action by tax assessing authorities on the ground merely that the equalization

plan is not the best which could have been pursued. It would certainly have been preferable for the city to have confected a definite plan and timetable for equalization of assessments throughout the city before imposing increased taxes upon certain property owners in the one segment designated as the Central Business District. Nevertheless, considering the complexity of the problem involved, and the fact that nothing whatsoever had actually been accomplished toward the goal for so long, I am unable to conclude that the action taken here is unconstitutional.

For many years, the problems involved in equalization of assessments have been studied, analyzed, referred to committees, debated, cursed and ignored. The issue has elected certain candidates and defeated certain officials. It has frightened far more. In fact, equalization of assessments has been the subject of every conceivable type of human endeavor except for a real step, no matter how small, in attempting its achievement. In this respect, Louisiana may be unique among the states. I cannot nullify as unconstitutional the first such step on the ground that it is not a large enough one or that it has not yet been followed by a sufficient number of additional steps.

s/ A. J. Duplantier
J UDGE

New Orleans, Louisiana
February 10, 1975

APPENDIX H

OPINION OF COURT OF APPEAL OF LOUISIANA FOURTH CIRCUIT

WALGREEN LOUISIANA COMPANY, INC., et al.,

v.

CITY OF NEW ORLEANS, et al.

No. 7139

Court of Appeal of Louisiana, Fourth Circuit

Jan. 2, 1976

Rehearing Denied Jan. 28, 1976
Writs Granted March 19, 1976

Before SAMUEL, STOULIG and BOUTALL, JJ.

STOULIG, Judge.

Appellants are owners or lessees of immovable property who challenge the validity and constitutionality of the 1974 and the 1975 assessments of tax against their properties within the Central Business District (CBD) of the City of New Orleans. Plaintiffs' properties are located in that part of the Second Municipal Assessment District bounded by the Mississippi River, Iberville Street, North Claiborne Avenue and Canal Street. Under a plan of revaluation of property primarily within the CBD of which the delineated strip constitutes a part, plaintiffs' taxes were increased substantially. After paying the 1974 taxes under protest, petitioners availed themselves of the provisions of LSA-R.S. 47:1999 and 47:2110 by filing suit for a refund of the amount of the increase after the revaluation and to have the assessment as increased declared invalid and unconstitutional. While this matter was pending, 1975 taxes accrued and were paid under protest and plaintiffs amended their pleadings to claim refund for the difference between the 1973

and the 1975 taxes. The trial court dismissed their suit.

[1,2] We reverse the decision of the trial court. In *Probst v. The City of New Orleans*, La. App., 325 So.2d 665 we declared the plan under which the increased assessments were levied against CBD property owners invalid and unconstitutional. The same reasoning applies in this case. Plaintiffs in this suit made the Director of Finance of the City of New Orleans a party defendant as required by LSA-R.S. 47:2110 (in this respect it procedurally differs from *Probst*). Therefore, they are entitled to a refund of that portion of the taxes paid under protest which represents the increase attributable to the revaluation of their property in the CBD.

For the reasons assigned the judgment appealed from is reversed and it is now ordered that there be judgment against Henry G. Simmons in his capacity as Director of Finance of the City of New Orleans in favor of the following plaintiffs:

1. May Heymann Wolf, Jimmy Heymann, individually and as trustee of the Jerry Heymann Separate Property Trust and Jerry Heymann, jointly, in the sum of $14,281.68;

2. Krauss Company, Ltd., and May Fellman Parker jointly in the sum of $5,638.48; and

3. Succession of Frank J. Monteleone, Mrs. Mae Attaway, wife of Oliver Miller, William A. Monteleone and Walgreen Louisiana Company, Inc., jointly, in the sum of $3,472.04.

The above awards of refunds shall bear interest at the rate of 2 percent per annum from date of payment of taxes until date of review in accordance with LSA-R.S. 47:2110.

It is further decreed that the increased amounts of the 1974 and the 1975 Central Business District tax assessments are null and void.

Reversed and rendered.

APPENDIX I

COMPANION OPINIONS OF FOURTH CIRCUIT

Cliff PROBST
V.
The CITY OF NEW ORLEANS et al.

No. 7097

Court of Appeal of Louisiana, Fourth Circuit

Jan. 2, 1976.

Rehearing Denied Jan. 28, 1976.
Writs Granted March 19, 1976.

Before SAMUEL, STOULIG and BOUTALL, JJ.

STOULIG, Judge.

This appeal concerns the validity and constitutionality of a 1973 ad valorem tax on realty within the Central Business District (CBD) of the City of New Orleans. In 1972, Cliff Probst paid a $608 city property tax on his lot at Poydras Street and Loyola Avenue in the CBD. In 1973 he was billed almost seven times that amount, or $4,202, on the same lot. The increase came about because the taxing authority began to revalue certain properties in the CBD. Plaintiff paid the 1973 tax under protest and then filed suit to have the 1973 assessment declared null and void and to recover the excess between the 1972 and 1973 tax. If successful the effect of plaintiff's action would be to reinstate the 1972 assessment. From a judgment dismissing his suit, plaintiff has appealed.

Appellant advances two arguments for reversal:

1. The assessment is unconstitutional in that a program of revaluation of property was instituted on a selective, rather than a uniform basis, resulting in a disparity of taxation between individuals and businesses similarly situated. It is argued this violates the equal protection and due process clauses of the federal and state constitutions.[1]

2. The tax rate attacked is the highest levied within the City of New Orleans and has been made to apply to a geographic district designated by City officials. Plaintiff contends the State reserves unto itself the right to designate special classifications for taxation purposes and any attempt by a local government to do so without legislative or constitutional authority is null and void.

By way of background, the City of New Orleans (constituting the entire Parish of Orleans) is divided into multiple assessment districts with one assessor elected for each district.[2] It is the assessor's function to appraise properties within his district and list the assigned values on the tax rolls. This list is reviewed by the Board of Review (Board),[3] which has the authority to propose changes in the tax rolls by way

---

1. U.S. Const. art. XIV; LSA-Const. Art. 1,§2 (1921).

2. All other Parishes each has one assessor.

3. The Board consists of the Mayor, as chairman, together with the members of the City Council, a member of the Board of Liquidation, a member of the Sewerage and Water Board, the president of the Board of Commissioners of the New Orleans Levee District and the president of the Orleans Parish School Board. The assessor of the municipal district shall act in a nonvoting advisory capacity to the Board. LSA-R.S. 47:1931.

resolution to the Louisiana Tax Commission. This commission is required to review assessments and approve tax rolls of all assessors throughout the State and may or may not adopt the resolutions proposed by the Board.

In the case before us, plaintiff's tax increase was the direct result of action by the Board. At a 1971 meeting the Board "* * * passed a resolution to create an advisory committee to the board to operate during the year to try to develop methods of creating greater equality in assessments throughout the city * * *."

To implement this resolution the Board's staff worked through the following year to reappraise numerous properties, but the reappraisal was not on a citywide basis. The revaluation was limited to the metro business area, which comprises a portion of the First Municipal Assessment District (First District) and a portion of the Second Municipal Assessment District (Second District). Five appraisers were employed by the City to revalue property in that part of the First District bounded by Canal Street, the Mississippi River, the Expressway and South Claiborne Avenue; and in that part of the Second District bounded by Esplanade Avenue, North Rampart Street, Iberville Street, North Claiborne Avenue, Canal Street and the Mississippi River.

Because of the enormity of the undertaking, individual appraisals were not made. Instead property was valued so much per square foot, the value being set primarily by the street location on which the property fronted. For the purposes of this opinion we need not set forth valuation methods with more particularity. Once the square-foot value was assigned by the appraisers, the assessor was expected by the Board to fix the assessment at 33 1/3 percent of the appraised land value.

In 1972 the assessor for the First District cooperated with the Board and thus the assessments were adjusted in accor-

dance with its plan only in that part of the First District delineated above. The Second District assessor refused to adjust the assessments as recommended by the Board and the valuation did not become effective in his district for 1973 because of insufficient time for the Board to secure the approval of the Tax Commission. However in 1974, the Board by resolution to the Commission changed his tax rolls to reflect the increased assessments on the revalued property. In two other municipal districts (Third and Fifth Districts) there have been piecemeal revaluation programs.

The evidence establishes the Board devised a revaluation program designed within a specified time period to effect only those properties within the First and Second Districts comprising the CBD. It was the declared objective of the City taxing authority to ultimately revalue and equalize property tax throughout the entire City, but no timetable had been set for the accomplishment of equalization citywide nor was any plan formulated at the time the CBD was revalued.

While the record indicates the Board staff has abandoned any hope of proceeding on a district by district revaluation (if such an idea was ever proposed), it reflects the tax officials are tentatively planning to proceed on a revaluation based on property classification. For example, vacant property in all districts would be revalued the first year; in the second year, industrial; and so on. It is apparent this idea has not been developed into a comprehensive plan with a definite projected completion schedule. Therefore, plaintiff and other property owners within the CBD must pay, for an indefinite time, higher property taxes than persons similarly situated without the CBD but within the same municipal district or in other sections of the City.

The testimony of the First District assessor establishes this range of ratios of percentages of actual value used for assessment purposes throughout his district:

CBD commercial properties	33 1/3%
Light and heavy industrial (outside the CBD)	25%
Commercial properties (outside the CBD)	25% to 30%

In addition to this disparity, those properties outside the CBD in the First District are not scheduled for a systematic reappraisal to adjust their tax base to current market value.

CONSTITUTIONALITY

[1,2] All citizens are guaranteed equal protection of law by U.S. Const. art. XIV and LSA-Const. Art. 1, § 2 (1921). The equal protection principle, as it applies to taxation, is reiterated as a constitutional right by that part of LSA-Const. Art. 10, § 1 in these words: "* * * all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax * * *." The right to uniformity of taxation is synonymous with the right to equal protection under the law in the area of taxation.

The United States Supreme Court in a landmark decision, *Sunday Lake Iron Co. v. Township of Wakefield,*[4] pointed out the equal protection clause of the Fourteenth Amendment is designed to protect each taxpayer against bearing a disproportionate share of the tax burden as a result of discrimination, either in the statute itself or the manner in which it is administered. Specifically the Court held "* * * an intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of property * * *."

The City argues it has undertaken a program of piecemeal revaluation in response to the "State Supreme Court's mandate in *Bussie v. Long*"[5] to revalue property in the Parish at

4. 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918).

5. 286 So.2d 689 (La. App. 1st Cir. 1973). Writs refused, 28 So.2d 354.

actual cash value. The Board decided to begin the process in the geographical area known as the CBD. (We note at this point the *Bussie* decision was rendered in 1973 and the revaluation program of which plaintiff complains was initiated in 1971; therefore we are somewhat confused by the statement the City is attempting to comply with a court decree.)

In any event, the City argues state and federal courts, recognizing the limited resources often available to taxing authorities in undertaking revaluation programs, have approved piecemeal reassessment plans as constitutional. The City has cited numerous cases in which cyclical plans of revaluation have been held constitutional; however, these are inapposite to the instant case. In the cited cases a legislative body has formulated an equalization plan requiring revaluation of property throughout the jurisdiction of the taxing authority within a specified period of time. For a cyclical revaluation program to meet the equal protection and uniformity requirements it must be systematic and nondiscriminatory. In *Carkonen v. Williams*[6] the Supreme Court of Washington observed:

> "In keeping with the import of the *Sunday Lake* decision * * * state courts which have considered cyclical revaluation programs have generally found them to be compatible with constitutional equal protection and uniformity provisions, *provided they be carried out systematically and without intentional discrimination.*"

This same Washington court declared unconstitutional a tax revaluation of 6 percent of the property within a county when the assessor, under a four-year cyclical revaluation law of the state legislature, was required to reassess 25 percent of the land in his county within one year. Even though he testified he could revalue the remaining 94 percent within the next three years of the program, the court

6. 76 Wash. 2d 617, 458 P.2d 280 (1969).

held in *Dore v. Kinnear:*[7]

> "Thus, where a cyclical program of revaluation is undertaken, a systematic and consistent program of revaluation must be maintained during each year of the cyclical period in a county. This would require that substantially an equal amount of taxable property in a county be revalued in each year of the cyclical program in order that all taxpayers receive the same treatment within the cyclical period to avoid derogation of the equal protection clauses of our federal and state constitutions and the uniformity of taxation clauses of our state constitution."

We subscribed to the quoted views, and if we apply that criteria to the plaintiff's situation, we can only conclude the tax levy on his CBD property violates his state and federal constitutional guarantees of equal protection of law and his state constitutional right to uniformity of taxation.

What renders the action of the Board unconstitutional in revaluing the property in the CBD is that it proceeded without a systematic plan to completely equalize taxes by revaluing properties throughout the City. Nicholas Gagliano, ex-executive assistant to the Mayor of New Orleans, conceded complete equalization should have been attempted but it was anticipated the plan for geographic equalization would be opposed by certain assessors. He confirmed the attempt at geographic revaluation (such as it was) was abandoned and the reassessment by classification of property was substituted in its place. No plan of revaluation by this latter method was ever formally adopted by the Board.

We therefore hold the 1973 assessment unconstitutional.

INVALIDITY

[3,4] Because we conclude the 1973 assessment is a

7. 79 Wash. 2d 755, 489 P.2d 898 (1971).

nullity in that it violates the constitutional guarantees of equal protection and uniformity, we need not discuss at length the arguments on its validity under our state statutes and constitution. We do hold however there is no basis in law for the City of New Orleans to create a geographic district and subject it to a special ad valorem tax. The power to create special classes for taxation purposes is reserved to the State and the requirement of uniform taxation can only be superceded by action of the state legislature. In *Bussie v. Long*, 286 So.2d 689 (La.App. 1st Cir. 1973), the court noted:

> "A state may establish reasonable classifications for the taxing of property at different rates. However, if state law requires that all property be taxed at a uniform rate and has enacted laws to insure such result, any substantial disparity or difference in taxes arising from failure of state officers to properly administer the laws will be held in violation of the due process and equal protection clauses of the United States Constitution. Weissinger, above. To the same effect, see *Louisville & Nashville R. Co. v. Public Serv. Comm. of Tenn.*, D.C., 249 F.Supp. 894."

In 1972 a proposed constitutional amendment was rejected by the people of the State of Louisiana that would have set up the CBD as a separately assessed and taxed public improvement district. Thus in revaluing CBD properties the Board had no legal basis for treating this area as a separate and distinct class for tax purposes.

[5,6] We cannot grant plaintiff's claim for reimbursement of the taxes paid under protest with interest because he failed to join the tax collector of the City of New Orleans, who is an indispensable party defendant[8] insofar as the claim for repayment is concerned. It is only to him that an order could be directed to reimburse the payments made under

8. An appellate court may note the non-joinder of an indispensable party on its own motion. C.C.P. art 927.

protest. LSA-R.S. 47:2110, the statute under which plaintiff brings his claim, directs in part:

> "The right to sue for recovery of a tax paid under protest as provided herein shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject-matter, for a full and complete adjudication of any and all questions arising in the enforcement of such right respecting the legality of any tax accrued or accruing or the method of enforcement thereof. *In any such suit, service of process upon the officer designated by law for the collection of the tax shall be sufficient service, and he shall be the sole necessary and proper party defendant in any such suit.*" (Emphasis added.)

[7] There are two aspects to this suit, namely, a request for a ruling on constitutionality and a claim for reimbursement of tax paid under protest should plaintiff prevail. With respect to the issue of constitutionality, the tax collector is not an indispensable party and the proper defendants were cited to admit of its adjudication. However, under the quoted statute, the collector had to be joined in the claim for reimbursement. LSA-C.C.P. art 641 defines an indispensable party as one whose interest in the subject matter is "* * * so interrelated, and would be so directly affected by the judgment, that a complete and equitable adjudication of the controversy cannot be made unless [he is] * * * joined in the action." The express verbiage of the statute makes the tax collector the proper party defendant in any suit to recover a tax paid under protest. Since the Director of Finance (the tax collector for the City of New Orleans) has not been cited and made a party defendant, the court is powerless to condemn him in judgment to return the tax paid.

However commendable and laudable may have been the efforts of the Mayor and Council of the City of New Orleans to eliminate tax inequities existing in the CBD by the realistic

adjustments of assessments, such an objective must be accomplished within the framework of the constitutional, statutory and jurisprudential guidelines of uniformity and equality.

For the reasons assigned, the judgment appealed from is annulled and set aside insofar as it decrees the 1973 Central Business District assessment constitutional and it is now ordered that said assessment be decreed to be unconstitutional. The increased amount of the 1973 assessment stated herein is declared to be null and void. Insofar as it dismisses plaintiff's suit for the return of the taxes paid under protest, the judgment appealed from is affirmed.

Annulled in part; affirmed in part; and rendered.

ON APPLICATIONS FOR REHEARING

PER CURIAM.

[8] We recall that part of our original decree dismissing plaintiffs' suit for a refund of taxes paid under protest for failure to join "the officer designated by law for the collection of tax." Under C.C.P. art. 646 we remand this matter to permit plaintiffs to join the tax collector, who, we hold, is an indispensable party defendant. Accordingly the decree is amended as follows:

For the reasons assigned, the judgment appealed from is annulled and set aside insofar as it decrees the 1973 Central Business District assessment constitutional and it is now ordered that said assessment be decreed to be unconstituonal. The increased amount of the 1973 assessment stated herein is declared to be null and void. Insofar as it dismisses plaintiffs' suit for the return of the taxes paid under protest, the judgment appealed from is set aside and this matter is remanded for the limited purpose of joining the tax collector as a party defendant and cite him to present whatever defense, if any, he has, so that an appropriate judgment may

be rendered. Assessment of costs are to await the final determination of this matter.

Except as amended herein, we adhere to our original opinion. The applications for rehearing are refused.

Original decree recalled and, as amended, reinstated; rehearings refused.

* * * * * * *

Harry B. SCHMIDT, Jr.
v.
The CITY OF NEW ORLEANS et al.

No. 7098.

Court of Appeal of Louisiana, Fourth Circuit

Jan. 2, 1976

Rehearing Denied Jan. 28, 1976
Writs Granted March 19, 1976.

STOULIG, Judge.

This appeal concerns the validity and constitutionality of a 1973 ad valorem tax on realty within the Central Business District (CBD) of the City of New Orleans. In 1972, Harry B. Schmidt, Jr., paid a $3,686 city property tax on a parcel of ground fronting on Tulane Avenue between Loyola Avenue and South Rampart Street. In 1973 he was billed $6,455.80 for taxes on the same property. The increase resulted from the taxing authority's revaluation of property in the geographic district designated by city officials as the CBD.

Plaintiff paid the 1973 tax under protest and then filed

suit to (1) recover the excess between the 1972 and the 1973 taxes; (2) to have the 1973 assessment declared unconstitutional; and (3) to have the 1972 value reinstated. From a judgment dismissing his suit, plaintiff has appealed.

This case was consolidated for trial with a suit entitled *Probst v. The City of New Orleans, et als.*, La.App., 325 So. 2d 665, and has been appealed as part of a consolidated case. The *Probst* matter bears number 7097 of our docket.

[1] For the reasons assigned in the *Probst* case, the judgment appealed from is annulled and set aside insofar as it decrees the 1973 Central Business District assessment constitutional and it is now ordered that said assessment be decreed to be unconstitutional. The increased amount of the 1973 assessment stated herein is declared to be null and void. Insofar as it dismisses plaintiff's suit for the return of the taxes paid under protest, the judgment appealed from is affirmed.

Annulled in part; affirmed in part; and rendered.

ON APPLICATIONS FOR REHEARING

PER CURIAM.

[2] We recall that part of our original decree dismissing plaintiff's suit for a refund of taxes paid under protest for failure to join "the officer designated by law for the collection of tax." Under C.C.P. art. 646 we remand this matter to permit plaintiff to join the tax collector, who, we hold, is an indispensable party defendant. Accordingly, the decree is amended as follows:

For the reasons assigned in the *Probst* case, the judgment appealed from is annulled and set aside insofar as it decrees the 1973 Central Business District assessment constitutional

and it is now ordered that said assessment be decreed to be unconstitutional. The increased amount of the 1973 assessment stated herein is declared to be null and void. Insofar as it dismisses plaintiff's suit for the return of the taxes paid under protest, the judgment appealed from is set aside and this matter is remanded for the limited purpose of joining the tax collector as a party defendant and cite him to present whatever defense, if any, he has, so that an appropriate judgment may be rendered. Assessment of costs is to await the final determination of this matter.

Except as amended herein, we adhere to our original opinion. The applications for rehearing are refused.

Original decree recalled and reinstated as amended; rehearings refused.

APPENDIX J

OPINION OF SUPREME COURT, STATE OF LOUISIANA

Cliff PROBST
v.
The CITY OF NEW ORLEANS et al.

Harry B. SCHMIDT, Jr.
v.
The CITY OF NEW ORLEANS et al.

WALGREEN LOUISIANA COMPANY, INC., et al.
v.
The CITY OF NEW ORLEANS et al.

Nos. 57594, 57595, 57602, 57603 and 57618.

Supreme Court of Louisiana.
Sept. 13, 1976.

Rehearings Denied Oct. 13, 1976.*

DIXON, Justice.

Plaintiffs in these cases, having paid ad valorem taxes under protest, brought these suits to contest the increased assessments. There was judgment for defendants in the district court. The Court of Appeal reversed, holding that the revaluation of the property violated constitutional guarantees of equal protection and uniformity, because the revaluation was accomplished without a systematic plan to equalize taxes by revaluing properties throughout New Orleans. *Probst v. The City of New Orleans et al.*, La. App. 325 So. 2d 665; *Schmidt v. The City of New Orleans et al.*, La.App. 325 So.2d 671; *Walgreen Louisiana Co., Inc. v. The City of*

*Typographical error; Rehearing denied Oct. 15, 1976; see Appendix K, p. A-

New Orleans et al., La. App., 325 So.2d 673 (1976). We granted writs to consider the rulings in these cases.

All cases involve commercial property within the central business district of New Orleans. The *Probst* and *Schmidt* cases involve improved and unimproved parcels within the First Municipal Assessment District, Parish of Orleans, and were consolidated for trial. In the *Walgreen* case several plaintiff owners or lessees of parcels lying in the central business district within the Second Municipal Assessment District joined in one suit. Probst and Schmidt paid 1973 taxes under protest; the *Walgreen* plaintiffs contest the 1974 and 1975 assessment. The cases were tried in 1975.

Plaintiffs contend that they and other property owners in the central business district suffered from arbitrary and discriminatory selection for increased evaluations, and that the increased assessments were illegally adopted.

Unlike other parishes, Orleans is divided into seven assessorial districts with an elected assessor for each. R.S. 47:1901. Each is required to "independently exercise his functions in the assessing and listing of the property in and for his respective district . . ." R.S. 47:1909. Assessments are subject to review by a board consisting of the Mayor of New Orleans as chairman, members of the City Council, a member of the Board of Liquidation, a member of the Sewerage and Water Board, the President of the Board of Levee Commissioners and the President of the Orleans Parish School Board. The Board of Reviewers "shall recommend to the tax commission increases or decreases in any assessment of real or personal property made by the various assessors of the parish of Orleans in accordance with the true conditions found by it." R.S. 47:1995. Tax rolls are forwarded to the Louisiana Tax Commission (see former Art. X, §12, La. Const. 1921, repealed, Act 789 of 1972, approved Nov. 1972), whose duty it is to fix the value of all taxable property. R.S. 47:1989; *Bussie v. Long*, 257 La. 623, 243 So.2d 776 (1971);

Bussie v. Long, La. App. 286 So.2d 689 (1973), writ denied La., 288 So.2d 354 (1974). The "lawful authorities of each parish" are permitted to fix valuations at less than actual cash valuations by using a percentage of the actual cash value fixed by the Tax Commission, provided that "for local purposes the percentage shall operate equally and uniformly on all taxable property within the parish or other local subdivision . . ." R.S. 47:1989. (Art. X, § 1, La. Const. 1921 provides that "the taxing authorities of the local subdivision may adopt a different percentage . . ."

In 1971 the Board of Reviewers formed an advisory committee to develop methods of equalizing assessments throughout the city. No formal plan was adopted for revaluation of all property in the city,but it was decided to do as much as possible in 1972. Assessor Smith of the Fifth Municipal District agreed to revalue the vacant land in the Algiers "lower coast." A decision was reached to attempt revaluation on land only, because of the difficulties in appraising buildings. A well-defined geographical area (referred to as the Central Business District or CBD throughout the records in both cases) was selected as the first to be revalued by a team of real estate appraisers to be appointed by the Real Estate Board under a contract with the city. The boundaries of the CBD were to be Iberville Street, the Mississippi River, Gaiennie Street, the Pontchartrain Expressway and South Claiborne Avenue. All except a strip one block wide from the river to Claiborne lying between Canal and Iberville Streets lay within the First Municipal District, and from the River to Rampart Street was bounded by the Vieux Carre. The staff of the Board of Reviewers depended heavily on the cooperation of the individual assessors, and when the assessor of the Second District objected to the project, the revaluation of the Iberville strip was postponed for a year.

The revaluation procedures adopted by the appraisers varied slightly from an individual appraisal of each parcel of land. Using available comparable sales, the appraisers established a square foot value for each block on each street in the CBD. An average sized, regular shaped parcel which fronted on only one street was valued by multiplying its area in square feet times the square foot value applicable to that block. Others parcels - irregular in shape, unusual in size, fronting on more than one stret and the like - were subject to adjustments by the appraisers beyond the simple application of area to square foot value.

No complaint is made in either of these suits that any assessment is based on an appraisal in excess of market value, or that the appraisals lacked such a uniform relationship to actual value that they were, for that reason, discriminatory. In the First Municipal District approximately eight hundred assessments were increased; about one hundred fifty were reduced; some stayed the same. In the Second Municipal District there were one hundred sixty-nine increases; eighty decreases and ten were the same.

In September of 1972 six resolutions were unanimously adopted by the Board of Reviewers concerning the revaluation. One was a policy resolution, expressing the purpose of the Board of Reviewers to equalize assessments in the CBD, and to fix the percentage of value on which each parcel would be assessed to be that which would produce approximately the same total amount of assessments as before equalization (except for improvements and additions). If more than a 3% increase in total assessments resulted from revaluation, the board resolved to reduce the assessments the follow-year, and the equalized assessments would not be increased for five years. A separate resolution fixed the assessment in the CBD at 33 1/3% of market land value. (Before 1972 commercial property in the CBD had been assessed as high as 40% of value in the First District; in the Second District the assessor stated that he listed the property at 25% of its value throughout the district). Other resolutions pertained to: relief for taxpayers whose land was burdened with a lease not reflecting present values; credit for "Historic and Green

Area" tracts; relief for hardship cases and funding the revaluation.

In due course the Louisiana Tax Commission approved the recommendations of the Board of Reviewers and revalued the land in the CBD lying in the First District for 1973 taxes, and for the Iberville strip of the CBD in the Second District for 1974 taxes.

In 1974 the appraisers for the Board of Reviewers appraised land in the New Orleans East area in the Third Municipal District. Land only was revalued, even though some property had been improved. The percentage of actual value recommended by the Board of Reviewers was not accepted by the Louisiana Tax Commission, which raised the percentage from ten to twenty, the same percentage applied to the lower coast of Algiers in 1972 by the assessor in the Fifth District. Public utilities property was also reviewed and reassessed in 1974.

By the end of 1974 the Board of Reviewers had adopted a program for revaluation of all lands in the City of New Orleans. All assessments on vacant property in Orleans Parish were to be equalized in 1975. In 1976 assessments for land zoned for various industrial uses were to be equalized, to be followed in 1977 for land zoned for commercial uses, for shopping centers, neighborhood businesses, medical services and general office districts. Revaluation and equalization were to be completed in 1978, including land and improvements, residential areas and specially zoned historic districts.

The procedures and plans of the Board of Reviewers were in sharp contrast to the practices of the assessors prior to 1972 disclosed by the record. In the absence of complaints, once property was assessed, its assessment went unchanged except when property was sold, improved or demolished.

[1] Plaintiffs argue that their increased assessments resulted from the violation of both constitutional principles and statutory provisions. The only attack on the revaluation itself seems to be that it was not done on a parishwide nor even a districtwide basis. Revaluation and reassessment in a good faith effort to achieve uniformity and equality in a given district need not be delayed until the entire district can be revalued at the same time. *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 38 S.Ct. 495, 62 L. Ed. 1154 (1918); Annotation Tax – Incomplete Equalization Program, 76 A.L.R. 2d 1077 (1961); *May Department Stores Co. v. State Tax Commission*, 308 S.W. 2d 748 (Mo. 1955); *Morrison v. Rutherford*, 83 Wash.2d 153, 516 P.2d 1036 (1973). If only a part of a taxing district can be revalued in one taxing year, because of limitations of manpower and funds on those charged with assessing, a program of revaluation may start in a reasonably determined portion of the district, even though property in that part might bear a larger portion of the tax burden for a reasonable time until all property is revalued.

[2] The central business district was the natural place to start. It contained the Superdome and other dramatic developments on Poydras Street, where property values increased greatly. If a developer contemplated buying land, he would be faced with taxation based on the sale price, with the prospect of competition from owners who were taxed on outdated land values. Although commercial, business and industrial sites are located from place to place throughout the city, there is no other area which is comparable to the size and concentration of commercial properties in the CBD. The district is surrounded by identifiable boundaries, natural, man-made and legal - the Mississippi River, the Pontchartrain Expressway elevated approach to the Mississippi River Bridge, the elevated through-the-city route of Interstate Highway 10 above the right-of-way of Claiborne Avenue and the Vieux Carre reaching from the river to Rampart and Iberville. The Vieux Carre is a constitutionally protected preser-

vation area in which property may be exempted from taxation and in which building alteration and demolition are prohibited without approval of the Vieux Carre Commission. Art. XIV, § 22A, La. Const. 1921.

The selection of the CBD as the area for beginning a revaluation and equalization program is supported by strong reasons and cannot be characterized as arbitraru or unreasonably discriminatory.

The attack is concentrated on the percentage (33 1/3%) of actual value which forms the assessment on which the tax is levied. The complaint is that other "commercial" property in the same assessorial district is taxed at a smaller percentage of the assessed value.

The record in the *Probst* and *Schmidt* case establishes that commercial property in the First Municipal District in the area covered by the CBD was assessed at 30% to 40% of the supposed value before the revaluation in 1972. In that district the assessor used four classifications to which he applied a rather flexible percentage to obtain an assessment. The only property discussed in the CBD was "commercial." Outside the CBD residential property was assessed at from 15% to 17%. The only real commercial area in the district, according to the assessor, was in the CBD, except for scattered spots and nonconforming uses, which were assessed at 25% to 30% of value. Light and heavy industrial were also assessed at about 25% to 30%.

In the Second Municipal District (the *Walgreen* case), property was assessed at 25% of value, except for the strip in the CBD lying between Canal and Iberville from the river to Claiborne.

Art. X, § 1, La.Const. 1921, in effect at the time of the assessments complained of, provides:

"The power of taxation shall be vested in the Legislature; shall never be surrendered, suspended or contracted away; and all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value, ascertained as directed by law, and all tax-payers shall have the right of testing the correctness of their assessments before the courts at the domicile of the assessing authority, or as may be directed by law. The valuation and classification fixed for State purposes shall be the valuation and classification for local purposes; but the taxing authorities of the local subdivision may adopt a different percentage of such valuation for purposes of local taxation."

Bussie v. Long, La. App. 286 So.2d 689 (1973), relied on well established constitutional principles:

"It is settled that a taxpayer is entitled to have his property taxed at that percentage of value applicable to others equally and similarly situated, even though statutory law may provide otherwise. The rule is based on the principle that if both the standard of true value and the uniformity and equality required by law cannot be achieved, equality and uniformity is preferred under the law. *Sioux City Bridge Co. v. Dakota County*, Neb. 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340, 28 A.L.R. 979.

"The equal protection clause of the Fourteenth Amendment to the United States Constitution protects a taxpayer from any state action which discriminates against him by subjecting his property to taxes not imposed on others in the same class. The right thus protected is the privilege of receiving equal treatment under law.

"Although states have wide discretion in the area of taxation, such discretion may not be exercised so as to arbi-

tarily deprive taxpayers of constitutional rights. While the Fourteenth Amendment does not require exact uniformity and equality in matters of taxation, it does protect against intentional and arbitrary discrimination whether resulting from the express terms of a statute or its improper execution by those charged with its enforcement. *Weissinger v. Boswell*, D.C., 330 F.Supp. 615.

"A state may establish reasonable classifications for the taxing of property at different rates. However, if state law requires that all property be taxed at a uniform rate and has enacted laws to insure such result, any substantial disparity or difference in taxes arising from failure of state officers to properly administer the laws will be held in violation of the due process and equal protection clauses of the United States Constitution. *Weissinger*, above. To the same effect, see *Louisville & Nashville R. Co. v. Public Serv. Comm. of Tenn.*, D.C. 249 F.Supp. 894." 286 So. 2d 689, 700-701.

[3] Although at the time of the trial of these cases in 1975 no effort had been made to revalue and assess commercial property in New Orleans outside the CBD, we do not find support in the record for plaintiffs' contention that their property had been singled out for the application of a higher tax ratio than other similarly situated properties. We find no evidence that it was the intention of the Board of Reviewers or the City Council or the Louisiana Tax Commission to apply a higher percentage to the value of CBD property than to similar commercial property outside the CBD when the revaluation was completed.

As mentioned before the intention of the Board of Reviewers in 1971 was to develop methods of revaluation of property in the whole city. That their intention was equalization and not discrimination is evidenced by their resolutions in September of 1972, expressing the policy to equalize

and not increase total assessments in the CBD. It is true that the authorities proceeded in a step-by-step manner, without the formal adoption of a citywide plan until the end of 1974. That plan contemplated the equalization of assessments on all business and commercial property in the city in 1977.

There is no evidence that a percentage of value would be used in 1977 for the assessment of commercial and business property different from that used for the assessment of property in the CBD.

[4] Plaintiffs argue that the taxing authorities could not legally assess commercial property at a percentage of value higher than other kinds of property in the city, relying on the absence of specific statutory authority and certain action of the legislature in 1972, as well as the failure of constitutional amendment in 1972 which would have permitted the creation of a Central Business District in New Orleans as a separately assessed and taxed public improvement district.

We find it irrelevant that the constitutional amendment was defeated; it had no relationship to equalization of assessment in New Orleans. Nor does the repeal in 1972 of R.S. 47:1988 support the inference that classification of different kinds of property for the purpose of assessment was illegal. The repealing act (Act 13, §1 of Ex. Sess. of 1972) was part of a legislative package designed to remove the State from ad valorem property taxing activity (see Art. 10-A. La. Const. 1921). R.S. 47:1988, among other things, specifically permitted the tax commission to classify and subdivide the classifications of different kinds of property. The amendment and reenactment of R.S. 47:1989 by Act 14 §1 of Ex. Sess. of 1972 continued the statutory power of the "lawful authorities" of parishes to fix percentages of valuations of properties for assessment purposes. The language of the old statute was retained, eliminating only the prohibition against fixing valuations by parish authorities at less than 25% of the actual cash valuation fixed by the Tax Commission. (R.S.

47:1997, not amended in 1972, but amended in respects not relevant in 1974, continues to permit the City Council to adopt a different percentage of value from that adopted by the Tax Commission, in which case the percentage adopted cannot be less than 25% of actual cash value fixed by the Commission.

The 1972 legislation was a reaction to demands for equalization of property taxes in Louisiana. Classifications of kinds of property for taxation was so widespread (see *Bussie v. Long*, supra) that we cannot assume the legislature was unaware of the practice. The unchanged continuation of the power of the Tax Commission to "change or correct" assessments (R.S. 47:1990), the continuation of the Board of Reviewers of Orleans Parish (R.S. 47:1931) and the continuation of the powers of the "lawful authorities" to levy, assess and collect taxes on "less than actual cash valuation" and fix percentages (R.S. 47:1989), reinforce the view that the failure to prohibit classification of different kinds of property left the power of the "lawful authorities" to classify after 1972 as it had been before 1972 - limited only by the "essential principle of practical uniformity." *Sunday Lake Iron Co. v. Wakefield*, supra.

Caddo Parish Police Jury v. Lancaster, La. App., 232 So.2d 781 (1970), does not support plaintiffs' position. There, the police jury desired to use one percentage of value for the levy of a 3/10 mill and a 1/10 mill tax for the juvenile court, and another percentage for the other taxes levied by the parish. The court held that the same percentage must be applied for all taxes levied. Whether different percentages could be used for different classes of property was not an issue in the case.

In summary, there has been substantial compliance with relevant statutory requirements, and no violation of due process or equal protection clauses of the United States Constitution. See *Louisiana & Arkansas Ry. Co. v. Goslin*, La. 300 So.2d 483 (1974).

For these reasons the judgment of the Court of Appeal is reversed, and the judgment of the district court is reinstated, at plaintiffs' costs.

SANDERS, C.J., and SUMMERS, J., dissent, being of the opinion that the judgment of the Court of Appeal is correct. See La. App., 325 So.2d 665-673.

MARCUS, J., dissents.

APPENDIX K

NEWS RELEASE FROM SUPREME COURT OF LOUISIANA

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

FOR IMMEDIATE NEWS RELEASE

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 15th day of October, 1976, the following action was taken by the Supreme Court of Louisiana in the cases listed below:

REHEARINGS REFUSED:

57,665	State v. Burnette
57,553	State v. Cole DIXON, J., is of the opinion that a rehearing should be granted.
57,666	State v. Unzueta See Per Curiam DIXON, CALOGERO AND DENNIS, J. J. are of the opinion that a rehearing should be granted.
57,513	State v. Crosby & Mamon See Per Curiam
57,594	Probst v. City of New Orleans, et al

57,595	Probst v. City of New Orleans, et al.
57,602	Schmidt v. City of New Orleans, et al.
57,603	" " " " "
57,618	Walgreen La. Co., Inc., et al v. City of N.O. SANDERS, C. J., and SUMMERS and MARCUS, J.J. are of the opinion that a rehearing should be granted.
57,630	State of Scott
57,684	State v. Alexander
57,685	State v. Alexander
57,644	State v. Turner & Turner (2 Applications) DENNIS, J., is of the opinion that a rehearing should be granted.
57,711	State v. Sanders NOT CONSIDERED See Per Curiam
57,764	State v. Chatman
57,945	Hanks v. Dr. Ranson, Swan, et al. (2 Applications) SUMMERS and MARCUS, J. J., are of the opinion that a rehearing should be granted.
57,578	State v. Nichols & Nichols TATE, DIXON, and CALOGERO, J. J., are of the opinion that a rehearing should be granted.
57,764	State v. Chatman

57,945 Hanks v. Dr. Ranson, Swan, et al
(2 Applications)
SUMMERS and MARCUS, J. J., are of the opinion that a rehearing should be granted.

57,578 State v. Nichols & Nichols
TATE, DIXON, and CALOGERO, J. J., are of the opinion that a rehearing should be granted.

57,687 State v. Welch
See Concurrence
SANDERS, C. J., SUMMERS AND MARCUS, J. J. are of the opinion that a rehearing should be granted.

57,688 State v. Cage
SANDERS, C. J., SUMMERS and MARCUS, J. J., are of the opinion that a rehearing should be granted.

57,695 State v. McCarroll and McCarroll

57,710 State v. Ledet

57,791 State v. Duhon
See Per Curiam

57,867 State v. McQueen

57,877 State v. Barnard

57,940 State v. Veal

58,168 State v. Rodney Jones

57,470 Anna Mae Lewis v. St. Charles Parish Hospital Service District, etc., et al.
SANDERS, C. J., SUMMERS and MARCUS, J. J., are of the opinion that a rehearing should be granted.

WRIT GRANTED:

58,717 State of La. ex rel Wilfred Young v. Ross Maggio, Jr., Warden Louisiana State Penitentiary (Parish of Orleans)

WRIT DENIED:

58,645 State of La. v. Jackie Thacker (Parish of Calcasieu)
SUMMERS, J., is of the opinion there is no merit to the application.
CALOGERO, J., is of the opinion the writ should be granted. The issue is a close one. We should not in this case wait until defendant has possibly been convicted, and then reverse the conviction.
DENNIS, J., is of the opinion the writ should be granted.

Supreme Court, U. S.
FILED
FEB 11 1977
MICHAEL RODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76 1011

WALGREEN LOUISIANA COMPANY, INC.; KRAUSS COMPANY, LTD.; SUCCESSION OF FRANK J. MONTELEONE; WILLIAM A. MONTELEONE, Individually; MAE ATTAWAY, now wife of Oliver Miller; MRS. MAY FELLMAN PARKER; MRS. MAY HEYMANN WOLF; JIMMY HEYMANN, Individually and as Trustee of the JERRY HEYMANN SEPARATE PROPERTY TRUST; and JERRY HEYMANN,
Petitioners

VERSUS

CITY OF NEW ORLEANS, HENRY G. SIMMONS, Director of Finance; CITY OF NEW ORLEANS, CLAUDE J. MAUBERRET, JR., Assessor; LOUISIANA TAX COMMISSION; C. GORDON JOHNSON; ROBERT C. BRAODHURST; and MRS. BLANCHE R. LONG; STATE OF LOUISIANA and ORLEANS LEVEE BOARD,
Respondents

OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

WALGREEN LOUISIANA COMPANY, ET AL.

Petitioners

VERSUS

CITY OF NEW ORLEANS, ET AL.,

Respondents

OPPOSITION TO WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

Respondents, City of New Orleans, et al, respectfully pray that the Petition for Writ of Certiorari filed herein by the Petitioners in the above captioned matter be denied.

OPINIONS BELOW

The opinions of the Louisiana Courts of Appellate Jurisdiction as set out in the Petition herein of Petitioners.

STATEMENT OF THE CASE

Petitioners herein are owners or lessees of immovable property located in the City of New Orleans. They are a portion of the plaintiffs who paid ad valorem taxes under protest and who then brought suit to contest the increase in the assessment on their respective property and for a refund of the increase in the taxes paid under protest. The claim of petitioners herein was consolidated with another claim of

other plaintiffs after both cases were on appeal in the Louisiana Fourth Circuit Court of Appeal. The cases remained consolidated for argument in the Louisiana Supreme Court.

Petitioners herein have their commercial property located in the Second Municipal District of the City of New Orleans. The commercial property of the other plaintiffs in the consolidated hearings before the Louisiana Appellate Courts is in the First Municipal District of the City of New Orleans. The companion case to that of petitioners herein was commenced for a refund of 1973 ad valorem taxes and the claim of petitioners was for a refund of 1974 ad valorem taxes.

Petitioners have also sought refund of the increase of ad valorem taxes paid since the commencement of their litigation which now includes the ad valorem taxes for 1977.

The City of New Orleans is divided into seven municipal districts, each district having its own assessor. The assessments of each district are subject to review by the Board of Review for the Parish of Orleans (City of New Orleans). This Board, after its review and hearing, makes recommendations regarding the ad valorem taxes in the Parish of Orleans (City of New Orleans) to the Louisiana Tax Commission which has the duty to actually fix the value of all taxable property, not only in Orleans Parish (City of New Orleans), but the entire State of Louisiana.

The records in this case and its companion case *(Cliff Probst vs. City of New Orleans, et al)* consist of various exhibits, stipulations and testimony. The records reflect the following facts as found by the Louisiana Supreme Court in its opinion.

In 1971 the Board of Review formed a committee to develop methods of equalizing assessments throughout the City and it was determined that revaluation should be attempted on land values only because of the difficulty in appraising improvements. A well defined geographical area (referred to as the Central Business District or the CBD throughout records in both cases) was selected as the first to be revalued by a team of independent real estate appraisers to be appointed by the Real Estate Board.

The Central Business District was a beginning point because that area contains the greatest concentration of businesses in the City of New Orleans and is located in the heart of the City. Canal Street, the largest street in New Orleans, extends along the Central Business District dividing the First and Second Municipal District bounds.

All the land values in the CBD were appraised including those in the First Municipal District and those seventeen blocks of the Second Municipal District in the CBD. The appraisals were done by independent real estate appraisers. The Board also dealt with the valuation and equalization of vacant land in the Fifth Municipal District in the area known as the Lower Coast of Algiers, which is an area across the Mississippi River from the main portion of the City and is basically undeveloped.

The 1972 meeting of the Board of Review was advertised and property owners were notified of the hearing. The Board depended upon the cooperation of the individual assessor and, because of the objections of the assessor of the Second Municipal District, the Board postponed the revaluation of the CBD property in his District. The assessor of the Fifth Municipal District accepted the recommendations of the

Board and the vacant property on the Lower Coast was revalued and an ad valorem tax was placed on this property at twenty (20%) percent of its value.

The 1972 hearings were held on the CBD land values in the First Municipal District and the Board adopted the revaluations referred to by the Court in the decision of the Louisiana Supreme Court. The recommendations as to value of the land and the percentage of value to be used in the ad valorem tax in this area were approved by the Louisiana Tax Commission.

In 1973 the same procedure was followed for the CBD property in the Second Municipal District wherein the property of the petitioners herein is located. The same percentage of value was used in the Second District as was used in the First District. In 1974 the Board dealt with land values in a portion of the Third Municipal District and used the same procedure with regards establishing values and the actual hearings and review of the values. The percentage of value to be used was changed in the 1974 recommendation to the Louisiana Tax Commission but the Commission rejected the recommendation of the Board and used the same percentage as used in 1972 on the vacant property in the Fifth Municipal District. The Louisiana Tax Commission in 1974 also reviewed and reassessed property owned by the public utilities located in Orleans Parish in 1974.

By the end of 1974 the Board of Reviewers had adopted a program for revaluation of all lands in the City of New Orleans. All assessments on vacant property in Orleans Parish were to be equalized in 1975. In 1976 assessments for land zoned for various industrial uses were to be equalized, to be followed in 1977 for land zoned for commercial uses, for shopping centers, neighborhood businesses, medical services

and general office districts. Revaluation and equalization were to be completed in 1978, including land and improvements, residential areas and specially zoned historic districts. Consistently, it should be noted that the 1974 Constitution of Louisiana, which was approved by the voting majority of the state, included a requirement that all land be revaluated on an equal basis by the year 1978.

No complaint is made in either of the companion cases that any assessment is based on an appraisal in excess of market value, or that the appraisals lacked such a uniform relationship to actual value that they were, for that reason, discriminatory. In the First Municipal District approximately eight hundred assessments were increased; about one hundred fifty were reduced; some stayed the same. In the Second Municipal District there were one hundred sixty-nine increases; eighty decreases and ten were the same.

ARGUMENT

The petitioners herein argue that this Court should accept certiorari in this particular case because they allege that rights guaranteed to them under the Fourteenth Amendment to the United States Constitution have been violated. The alleged violation consists of the revaluation of a portion of a taxing district and then the application of a percentage of value in said portion that is different than in the rest of the district.

The petitioners, however, are met with certain problems in advancing their position. The first problem is that the record in this case and its companion clearly supports the findings of the Louisiana Supreme Court as reported in *Probst v. City of New Orleans*, 337 So. 2d 1081 (1976). Let us look at some of these findings and the law applicable.

The Supreme Court of Louisiana found that the Board of Review had the intention in 1971 to develop methods of revaluation of property in the entire City and that the Board proceeded in a step by step manner from 1971 through 1974 to implement the overall plan of equalization. The Court below felt that the record supported the contention of the respondents that an actual plan existed even before the 1974 adoption of a formal resolution of the Board of Review.

The Louisiana Supreme Court further found that the procedure and plans of the Board of Review was different than, and in fact was in contrast to, the practices of the individual assessors in the districts where the Board had attempted to achieve equality in assessment. The Court found that the practice had been that once all assessors placed a value on the property and received no complaint about the assessment the assessment went unchanged except when the property was sold, improved or demolished. The Louisiana Supreme Court further found that prior to the actions of the Board of Review and the Louisiana Tax Commission that commercial property in the Central Business District was assessed at a percentage of value that ranged from twenty-five (25%) percent to forty (40%) percent of the supposed value.

The Louisiana Supreme Court after a review of the evidence further found that:

> "The Central Business District was the natural place to start. It contained the Superdome and other dramatic developments on Poydras Street, where property values increased greatly. If a developer contemplated buying land, he would be faced with taxation based on the sale price, with the prospect of competition from owners who were taxed on outdated land values. Although

> commercial, business and industrial sites are located from place to place throughout the City, there is no other area which is comparable to the size and concentration of commercial properties in the CBD. The district is surrounded by identifiable boundaries, natural, man-made and legal -- the Mississippi River, the Pontchartrain Expressway elevated approach to the Mississippi River Bridge, the elevated through-the-City route of Interstate Highway 10 above the right-of-way of Claiborne Avenue and the Vieux Carre reaching from the river to Rampart and Iberville." *Probst*, supra, 1083.

The Louisiana Supreme Court found that:

> ". . .the selection of the CBD as the area for beginning a revaluation and equalization program is supported by strong reasons and cannot be characterized as arbitrary or unreasonable discriminatory." *Probst*, supra, 1085.

The law on this type of procedure fully supports the Judgment of the Louisiana Supreme Court.

The attack on the revaluation procedure used by the Board of Review and the Louisiana Tax Commission is limited to the fact that it was not done in the entire City of New Orleans or an entire district within the City at the same time. This attack does not merit a review of the Judgment of the Louisiana Supreme Court since this Court has consistently held otherwise beginning with the decision of *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 38 S.Ct. 495, 62 L.Ed. 1154 (1918). That case has been followed by

other state and federal cases such as *Union Sulphur Co. v. Reid*, 271 F. 978 (W.D. La. 1920); *May Department Stores Co. v. State Tax Commission*, 308 S.W. 2d 748 (Mo. 1955); *Skinner v. New Mexico State Tax Commission*, 66 N.M. 221, 345 P.2d 750 (1959); *Citizens Committee for Fair Property Taxation vs. Warner*, 127 Colo. 121, 254 P.2d 1005 (1953); *Newport Mining Co. vs. Ironwood*, 185 Mich. 668, 152 N.W. 1088 (1915); *Corkonen v. Williams*, 458 P.2d 280 (1973); *Morrison v. Rutherford*, 83 Wash. 2d 153, 516 P.2d 1036 (1973) and *Hamilton v. Adkins*, 250 Ala. 557, 35 So.2d 183 (1948) cert. den. 355 U.S. 861.

These cases are based on the *Sunday Lake Iron Co.* holding and they stand for the proposition that:

> ". . .if only a part of a taxing district can be revalued in one taxing year, because of limitations of manpower and funds on those charged with assessing, a program of revaluation may start in a reasonably determined portion of the district, even though property in that part might bear a larger portion of the tax burden for a reasonable time until all property is revalued."
> *Probst*, supra, 1084.

The petitioners in this case as well as plaintiffs in other cases attacking assessments or assessment procedures as a violation of the equal protection guarantee of the Fourteenth Amendment to the United States Constitution must do more than show their assessment is not equal to other assessments. It is upon these grounds that petitioners herein would base their contention.

The other contention of the petitioners is that their

rights were violated because the Board of Review and the Louisiana Tax Commission used a percentage of value for their assessments that was different than the percentage of value that had been used by the assessors in fixing ad valorem taxes in the Central Business District.

We have seen that the Louisiana Supreme Court found that the percentage of value used by assessors in the Central Business District prior to the actions of the Board of Review ranged from twenty-five (25%) per cent to forty (40%) percent of the value after the value had been determined by the assessor. The Board of Review and the Tax Commission used a percentage of value of thirty-three and one-third (33 1/3%) percent of value in a uniform and equal manner throughout the Central Business District. No longer was there a different percentage of value used on land values in the Central Business District but a uniform and equal percentage was used. Would this difference in the percentage of value be a violation of the rights of petitioners? The answer must be no.

The petitioners must prove that the assessments or the assessment procedures used for their property resulted in their assessment being unequal to others and that thus they are:

> "a victim of 'intentional and arbitrary discrimination whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.' "
> *Southland Mall Inc. v. Garner*, 455 F.2d 887, (6th Cir. 1972) at 889 citing *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S. Ct. 495, 62 L.Ed. 1154 (1918); *Sioux City Bridge Company v. Dakota County*, 260 U.S. 441, 43 S.

Ct. 190, 67 L.Ed. 340 (1923); *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23, 52 S.Ct. 48, 76 L.Ed. 146 (1931); *Charleston Federal Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 65 S.Ct. 624, 89 L.Ed. 857 (1945); *Louisville & Nashville R.R. Co. v. Public Service Comm. of Tenn.*, 389 F.2d 247 (6th Cir. 1968).

This Court has explained the intention that must be found as:

"There must be something that amounts to an intention, or the equivalent of fraudulent purpose, to disregard the fundamental principle of uniformity."
Southland Mall, supra, 889 citing *Rowley vs. Chicago & Northwest Railway*, 293 U.S. 102, 111, 55 S.Ct. 55, 59, 79 L.Ed. 222 (1934).

Have the petitioners met such a test? Again the answer is no since the Louisiana Supreme Court in their opinion in this matter stated:

> ". . .we do not find support in the record for plaintiffs' contention that their property had been singled out for the application of a higher tax ratio than other similarly situated properties. We find no evidence that it was the intention of the Board of Reviewers or the City Council or the Louisiana Tax Commission to apply a higher percentage to the value of CBD property than to similar commercial property outside the CBD when the revaluation was completed.

> "As mentioned before the intention of the Board of Reviewers in 1971 was to develop methods of revaluation of property in the whole city. That their intention was *equalization and not discrimination* is evidenced by their resolutions in September of 1972, expressing the policy to equalize and not increase total assessments in the CBD. It is true that the authorities proceeded in a step-by-step manner, without the formal adoption of a citywide plan until the end of 1974. That plan contemplated the equalization of assessments on all business and commercial property in the city in 1977. (emphasis supplied)
>
> "There is no evidence that a percentage of value would be used in 1977 for the assessment of commercial and business property different from that used for the assessment of property in the CBD." *Probst vs. City of New Orleans, et al.*, supra, at 1086.

Thus instead of finding the type of intention as specified in the *Rowley* case the Louisiana Supreme Court found that the actions of respondents were in good faith and non-discriminatory.

CONCLUSION

The Louisiana Supreme Court fully heard and dealt with the arguments and claims of petitioners. It reviewed the complete record in the case of the petitioners and that in the companion case. It rejected the claim of the petitioners and it is urged by the respondents that the Writ of Certiorari of the petitioners should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Writ of Certiorari has been served on:

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